

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 76 of 2013

Wednesday this the 14th day of October, 2015

CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P.Gopinath, Administrative Member

B. Sreekandan Nair, aged 60 years
S/o Bhaskara Pillai (Retired Peon, Office of the Divisional Personnel Officer/Southern Railway, Trivandrum Division, Trivandrum.14 residing at Melekombadickal Veedu, Maruthoor, Neyyatinkara PO, Trivandrum District.

...Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

- 1 Union of India represented by the General Manager, Southern Railway, Headquarters Office, Park Town PO Chennai-3.
2. The Divisional Railway Manager, Southern Railway, Trivandrum Division, Trivandrum.14.
3. The Divisional Personnel Officer, Southern Railway, Trivandrum Division, Trivandrum.14.

...Respondents

(By Advocate Mr. K.M. Anthru)

This application having been finally heard on 05.10.2015, the Tribunal on 14.10.2015 delivered the following:

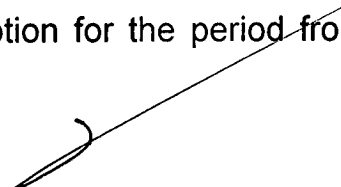
ORDER

Per: Justice N.K.Balakrishnan, Judicial Member

The applicant is a retired Peon. Earlier he had approached this Tribunal by filing OA 13/2009 for a declaration that he is entitled to be considered for regular absorption as a Group D employee in the Trivandrum



Division of Southern Railway without any restriction giving him preference to persons of lesser service. That OA was allowed by this Tribunal (vide Annexure. A.1) dated 1.12.2009. It was declared that the applicant is entitled to be considered for regular absorption from the date his immediate junior in the merged list of retrenched casual labourer was absorbed as a Trackman/Group D employee, But the respondents held that the applicant is unfit in the requisite medical classification and as such the applicant could not be considered for absorption as Trackman. Again the applicant filed OA 670/2010. That was allowed vide Annexure.A2 order dated 22.2.2011. This Tribunal directed the respondents to consider the applicant against any Group D post requiring lesser medical classification. Though that order was passed on 22.2.2011 respondents considered and granted the applicant absorption as a Group D (Peon) only w.e.f. 16.4.2012. He finally retired on superannuation on 31.12.2012. So many other persons juniors to the applicant were engaged during the year 1996/1999. Going by the directions given in Annexure. A.1 the applicant ought to have been regularized with effect from the date from which the applicant's juniors were regularized. So many representations were given by the applicant. But no action was taken by the respondents. Again Annexure. A3 representation was given, to which also there was no response. The respondents were bound to treat the applicant as having been regularized from the date of regularization of his juniors in the merged seniority list, the applicant contends. This application has been filed for a declaration that the non-feasance on the part of the respondents to grant the applicant the benefit of regularization/absorption for the period from 1996/1999, the date from

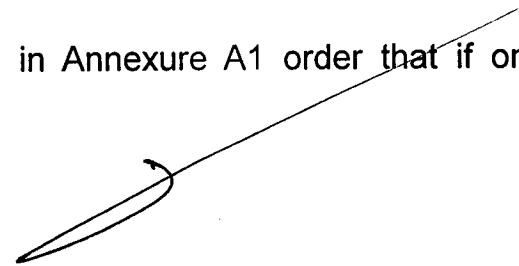


which the applicant's juniors in the merged seniority list were regularized is arbitrary, discriminatory and hence unconstitutional. He also seeks a direction to be given to the respondents to grant him arrears of pay and allowances and other consequential benefits for the period from 5.1.2009 as directed in Annexure. A2 order. A further direction is ought to regularize the applicant from the date from which the applicant's juniors in the merged seniority list were regularized.

2. The respondents filed reply statement refuting the allegations, contending as follows.

3. The payer for benefit of regularization/absorption from the period 1996/1999 is hit by res judicata. Though the applicant had prayed for absorption on par with his juniors in the list of retrenched casual labourers with all consequential benefits, after elaborate hearing and after going through similar matters, the Tribunal in Annexure. A2 directed to consider the applicant against a Group D post requiring lesser medical classification. No direction was issued as per Annexure A.2 for giving benefit from an earlier date. Therefore, the claim made in this O.A for benefits from an earlier date cannot be sustained at all. The claim in this OA suffers from estoppel, acquiescence and delay also. Though the applicant filed OA 670/2010, the prayer granted therein was not similar to what was granted in Annexure.A.1 order.

3. Annexure A2 was implemented by the respondents. It was accepted by the applicant as correct. That was not challenged at all. Therefore, the applicant is estopped from challenging the same in this OA. There is a condition in Annexure A1 order that if only he is otherwise

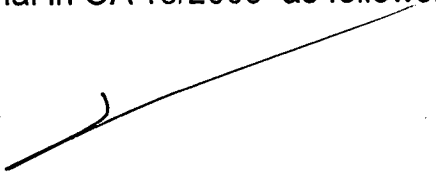


qualified for such absorption he will be entitled to the benefits of absorption. Since Annexure A2 order was passed subsequently, the applicant cannot rely upon Annexure A1 order. The applicant is entitled to count the service only from the date he joins in the post as provided in Paragraph 302 of Indian Railway Establishment Manual. The applicant retired on 31.12.2012 on superannuation.

4. The applicant was found unfit in the requisite medical classification for the post of Trackman. Medical unfitness noted by the respondents was not challenged by the applicant. As per Annexure A2 this Tribunal directed the respondents to consider the applicant for any other posts at the earliest. It was not given retrospective effect. In Annexure A2 it was held that the applicant's absorption can only be in a vacancy which became available at the earliest. Hence, the respondents contend that the applicant is not entitled to get any relief as sought for.

5. We have heard the learned counsel appearing for the parties and have also gone through the pleadings and documents.

6. Annexure A1 is the order passed in OA No. 13/2009 filed by the applicant. It was contended therein that the applicant was a retrenched casual labour having 674½ days of casual service. His name was entered at serial No. 2043 of live casual labour register. The OA was filed complaining of non-absorption of the applicant as a Trackman. It was contended that he had reported to the authorities for an order of absorption but the respondents did not absorb him as a Trackman/Group-D employee. Taking note of the earlier order passed by the Tribunal in OA No. 271/2006 it was held by the Tribunal in OA 13/2009 as follows:



"In view of the above position, the OA is allowed. I declare that the applicant is entitled to be considered for regular absorption from the date his immediate junior in the merged list of retrenched casual labourers was absorbed as a Trackman/Group D employee, if he is otherwise qualified for such absorption and the respondents, shall, consider him for such absorption within two months from the date of receipt of a copy of this order. I, further direct the respondents to grant him the benefit of seniority etc on par with his junior. He will also be entitled to arrears of pay and allowances arising from the date he has filed this OA. ie., from 5.1.2009....".

Underlined to lay emphasis

Besides, there was a further direction making the respondents to pay Rs. 2500/- as costs to the applicant. Admittedly that sum of Rs. 2500/- was paid to the applicant.

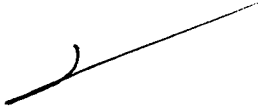
7. The applicant again filed OA 670/2010 which was disposed of by this Tribunal as per Annexure A2 order dated 22.2.2011. In Annexure A2 the applicant contended that he has a total service of 635.5 days as against 674½ days mentioned in Annexure A1. It was contended by the applicant that in the light of Annexure A1 the respondents were bound to consider his case for absorption. The applicant was admittedly called for medical examination. It is contended that he was not intimated about the result until he obtained the information under the Right to Information Act. The respondents raised so many contentions. Ultimately this Tribunal, following the order in OA No. 886/2009, allowed the application and directed the respondents to consider the applicant against any Group-D post requiring lesser medical classification at the earliest.

8. As stated earlier in Annexure A1 it was ordered that the applicant shall be absorbed if he is otherwise qualified for such absorption. The respondents contended that since he was not medically fit to be posted as a Trackman he was not posted as Trackman and so it cannot be said that

the applicant had obtained any right of absorption since even as per Annexure A1, a condition was fixed as aforementioned. However, as directed by this Tribunal under Annexure A2, the applicant was considered to be appointed against another Group-D post requiring lesser medical classification. According to the respondents they cannot be found fault with for the delay because the applicant was medically unfit to be posted as Trackman. Therefore, according to the respondents the applicant cannot bank upon Annexure A1 order since that order stood superseded by Annexure A2.

9. The learned counsel for the applicant would submit that the effect of Annexure A1 order was not taken away at all but only because of the fact that the applicant was found medically unfit to be posted as Trackman, he was directed to be considered for any other Group-D post requiring lesser medical classification. Be that as it may, the applicant was considered for another Group-D post because of the fact that he was not found fit to be posted as Trackman as per the earlier order. Hence it cannot be said that there was denial of any legitimate claim but only because the applicant was found medically unfit, he could not be posted as Trackman, the respondents contend.

9. It is vehemently argued by the learned counsel for the respondents that since no order was passed under Annexure A2 to the effect that the applicant should be granted appointment with retrospective effect, the present claim made by the applicant that he must be deemed to have been absorbed in service with effect from 5.1.2009 is totally unsustainable. The direction in Annexure A1 that the applicant would also




be entitled to arrears of pay and allowances arising from the date he filed the said OA i.e. from 5.1.2009 is conditioned by the fact that the applicant must have been otherwise qualified for absorption as Trackman. Since he was medically not fit to be qualified for absorption as Trackman, the date 5.1.2009, does not assume any significance at all, especially because Annexure A2 order to some extent supersedes Annexure A1 order. There was no case for the applicant that the medical report which showed that the applicant was not fit for being posted or absorbed as Trackman was not challenged at all by the applicant. This has been pointed out by the respondents in support of the plea that the respondents cannot be blamed for the so called delay in ordering absorption of the applicant in any other Group-D post.

10. It is submitted by the learned counsel for the applicant that the juniors of the applicant were regularized in 1999 and at any rate since in Annexure A1 order it was specified that the applicant is entitled for consequential benefits with effect from 5.1.2009, the applicant must be deemed to have been absorbed with effect from that date.

11. It is also pointed out by the learned counsel for the applicant that one Vishwanathan who was junior to the applicant was absorbed, and so the applicant should have been absorbed at least on that day. As stated earlier the applicant could not be absorbed as a Trackman because of the medical unfitness referred to above.

12. Though the applicant could not be absorbed as Trackman the matter of fact remains that as per Annexure A1 order the applicant was held to be entitled to be absorbed and to get benefits thereof with effect



from 5.1.2009. That order became final. Annexure A2 happened to be filed only because the applicant could not be absorbed as Trackman. The respondents could have absorbed him in any other post as Group-D employee. Therefore, the applicant must be deemed to have been absorbed in January, 2009 but in view of the fact that he could not be posted as a Trackman and that he was actually posted as a Peon on 16.4.2012, he cannot claim any arrears of pay and allowances but he must be deemed to have been absorbed on 5.1.2009 only for the purpose of notional fixation and for pension.

13. Therefore, this OA is allowed in part holding that the applicant should be deemed to have been notionally appointed on 5.1.2009 and his pay should be notionally fixed but only for the purpose of computing the actual pension, the applicant is entitled to get as per the Pension Rules applicable to the Railway employees. It is made clear that the applicant is not entitled to get arrears of pay and allowances as his appointment w.e.f 5.1.2009 is only notionally.. It is ordered accordingly. No order as to costs.


(P.Gopinath)
Administrative Member
kspps/sa


(N.K.Balakrishnan)
Judicial Member